Supreme Court, U.S.
FILED
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No. 04 372

In the

SUPREME COURT OF THE UNITED STATES

John L. Corrigan,

Petitioner

v.

Dennis Dollar, Chairman,
National Credit Union Administration

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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PETITION FOR A WRIT OF CERTIORARI

John L. Corrigan
31912 – 53rd Place South
Auburn, WA 98001
253.735.5025

QUESTION PRESENTED

Whether the GAOA (Male) –

> GAOA – General Accounting Office Act of 1996 (GAOA, 31 U.S.C. § 3702 et. seq.)

is married to the CDA (female) –

> CDA – Contracts Disputes Act - Contract Disputes Act of 1978 [CDA] (41 U.S.C. 607 et. seq.)

prior to his appearance before the GSBCA –

> GSBCA – General Services Board of Contract Appeals

LIST OF PARTIES

For the Petitioner:

John L. Corrigan
31912 – 53rd Place South
Auburn, WA 98001-3877
253.735.5025

For the Respondent:

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OPINIONS BELOW

The opinions of the U. S. Court of Appeals for the Federal Circuit (CAFC) are unreported. The General Services Board of Appeals (GSBCA) decisions are reported as: In the Matter of John L. Corrigan, GSBCA No. 15707-TRAV (September 6, 2002) (*See Appendix VI*), Reconsideration Denied (*See Appendix XIII*), In the Matter of John L. Corrigan, GSBCA No. 16096-TRAV (May 22, 2003) (*See Appendix XIV*), Reconsideration Denied (*See Appendix XVII*), and In the Matter of John L. Corrigan, GSBCA No. 16170-TRAV (October 3, 2003) (*See Appendix XVIII*), Reconsideration Denied (*See Appendix XXVI*).

JURISDICTION

The judgments of the GSBCA were entered: In the Matter of John L. Corrigan, GSBCA No. 15707-TRAV (September 6, 2002), In the Matter of John L. Corrigan, GSBCA No. 16096-TRAV (May 22, 2003), In the Matter of John L. Corrigan, GSBCA No. 16170-TRAV (October 3, 2003).

On direct review to the CAFC, the court on February 2, 2004, dismissed 03-1200 and 03-1511 on NCUA's motion to dismiss, and just dismissed 04-1150. (*See Appendix I*)

Appellant's motion for reconsideration was denied by the CAFC on April 23, 2004. (*See Appendix IV*)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1295(a)(10).

STATEMENT OF THE CASE

Corrigan, an NCUA examiner, appeals from several General Services Board of Contract Appeals decisions: In the Matter of John L. Corrigan, GSBCA No. 15707-TRAV (September 6, 2002), In the Matter of John L. Corrigan, GSBCA No. 16096-TRAV (May 22, 2003), In the Matter of John L. Corrigan, GSBCA No. 16170-TRAV (October 3, 2003). In all three decisions the Board denied Corrigan's various claims that NCUA had wrongfully refused reimbursement of certain travel expenses. The Board based its decisions exclusively upon case law and its review and interpretation of the Federal Travel Regulations (FTR), utilizing its authority under the General Accounting Office Act of 1996 (GAOA, 31 U.S.C. § 3702.(a)(3)) and the Contracts Disputes Act (CDA, 41 U.S.C. § 607).

Separately, Corrigan appealed those decisions to the CAFC, under 03-1200, 03-1511, and 04-1150. NCUA was given a stay while an attempt was made to have the CAFC publish their unpublished opinion of Robert B, relating to a question of jurisdiction on a similar GAOA claim. The CAFC denied NCUA's request to publish. The three CAFC claims were treated as one for the decisions to dismiss, and for the denial of the motions for reconsideration. All three decisions are presented here as one overall claim.

Question:

Whether the GAOA is married to the CDA prior to appearance before the GSBCA.

INTRODUCTION

A GAOA contracting officer's decision can be appealed to the U. S. Court of Federal Claims (CFC) or to the General Services Board of Contract Appeals (GSBCA).

If appealed to the CFC, then there is a direct appeal of the CFC decision to the U.S. Court of Appeals for the Federal Circuit (CAFC).

However, according to the CAFC, if appealed to the GSBCA, the GSBCA decision (or resubmit) appeal is through the CFC and not directly to the CAFC. In other words, if Corrigan appealed directly to the CFC, he would have direct access to the CAFC, but because he appealed to the GSBCA, he is now required to re-submit his claim to the CFC – before he can appeal the CFC decision to the CAFC.

MARRIED ARGUMENT

> The Board's decisions in these matter [sic] were not rendered pursuant to the CDA, but under the GAOA, which authorizes resolution of civilian employee federal travel claims. If, as here, the CDA does not apply, the court lacks jurisdiction to decide whether the Board erred in denying Corrigan's claims.

ORDER, dated February 2, 2004. The CAFC determined that since the GSBCA resolved the claim using ***only*** the GAOA that they do not have jurisdiction. In other words, because Corrigan appeared before the GSBCA singly (GAOA) and not under the CDA, the CAFC had no jurisdiction. However, this is not true.

By itself, the GAOA cannot appear before the GSBCA. The GAOA does not confer jurisdiction on the GSBCA – it only confers the jurisdiction to the Comptroller General. *See 31 U.S.C. § 3702.* The Comptroller General in turn – ***through the CDA*** – requests that the GSBCA hear claims relating to the GAOA. The GSBCA accepts this jurisdiction to hear GAOA claims only pursuant to the CDA. *See 41 U.S.C. 607(c. & d.)*

This works the same for the CDA. The GSBCA cannot hear claims pursuant to the CDA (singly), because the CDA (like the Tucker Act) is not a money mandating statute – only a jurisdictional one.[1] *See United States v. Testan, 96 S.Ct. 948, 953 (1976).* In other words, the CDA needs the GAOA (or similar money mandating statute/contract) or it cannot appear before the GSBCA.

Neither the GAOA nor the CDA can appear singly before the GSBCA. Further, the marriage is automatic. There is no ceremony. The simple fact of appearing before the GSBCA under the GAOA means that you are married to the CDA. The GSBCA has recognized this fact:

> Authority: 31 U.S.C. 3702; ***41 U.S.C. 601-613***; . . . [Emphasis added]
>
> **6104.1 Scope [Rule 401]**
>
> *(a) Authority.* These procedures govern the Board's resolution of claims by federal civilian employees for certain travel or relocation expenses that were formerly settled by the Comptroller General under 31 U.S.C. 3702.

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[1] 28 USCS § 1491 and CDA reasonably can be read together as providing that contract claims subject to CDA cannot be heard in Claims Court unless it is both cognizable claim under Tucker Act and brought by contractor who has met exhaustion and other procedural requirements of CDA, including certification. *Corporate Air v. United States (1992) 26 Cl. Ct. 204.*

> Section 201(n)(3) of the General Accounting Office Act of 1966, Public Law 104-316 . . .

48 CFR Ch. 61 (10-1-00 Edition), GSA Board of Contract Appeals. Under the CFR's the GSBCA recognizes that their jurisdiction to resolve claims under the GAOA comes from the CDA.

In spite of how it appeared to the CAFC, the GSBCA made their determination pursuant to ***both*** the GAOA (determining the claim issue) and the CDA (determining the jurisdictional issue). Therefore, because the determination was pursuant to the CDA, the CAFC has jurisdiction to hear the appeal. *See 41 U.S.C. 607(g)(1)(A).*

ROBERTA B. ARGUMENT

The case at bar was stayed on March 26, 2003, pending a decision by the CAFC in Roberta B. v. Central Intelligence Agency, No. 02-1072. This Court issued an unpublished decision in Roberta B. on July 14, 2003. On August 12, 2003, the Government filed a motion to publish the Roberta B. decision. The Government's motion to publish Roberta B. was denied on September 8, 2003.

In the unpublished Roberta B. decision, the court determined that Roberta B. did not meet the definition of a "contractor" under the CDA. This is rather remarkable given the exceptionally all encompassing definition of a contractor under the CDA. The "term "contractor" means a party to a Government contract other than the Government." *See 41 U.S.C. 601(4).* It is also extraordinary to parse out a GAOA claimant while leaving intact the government's ability to appeal a GAOA decision.[2]

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[2] The CAFC analysis would make it possible for the government to appeal the GSBCA decision but not the GAOA claimant. For example, Roberta B. is not a "contractor" under the CDA but the government is still the "government" and, therefore, *would* be able to appeal the decision. *See 41 U.S.C. 601(g)(1)(B).*

> Section 8(g)(1) deals with the appeals process available to the contractor and the Government from an adverse decision of an agency board's adverse decision to appeal that decision. ***It is the intent of the committees to insure that the rights given to the contractor and the Government are equal within the remedies system***, . . .[Emphasis added]

41 § 607, Chapter 9 Contract Disputes, p. 559. By parsing out the GAOA claimant and leaving the government intact, this would undermine the intent of the committees.

Further, while Roberta B. is unpublished, it is referenced in both pocket notes -- 41 USCS § 601 and 31 USCS § 3702. While I applaud the CAFC's decision not to publish Roberta B., there are now at least two decisions by the CAFC to deny a GAOA appeal on jurisdictional grounds. Given the less than stellar basis for these denials, guidance from this Court would be welcomed.

Finally, the GAOA is recognized as a contractual obligation to pay travel expenses incurred for government travel. *See 7A Fed Proc, L Ed., Court of Claims, § 19:43 et. seq. Introduction; Tucker Act jurisdiction, pp. 251-274.* As such, a GAOA claimant is a "contractor" under the definition provided in the CDA.

OTHER ARGUMENTS

Any appeal - The CAFC agrees with the GSBCA that "under the CDA, the board had jurisdiction "to decide any appeal from a decision of a contracting officer . . . relative to a contract made by its agency."" *See Cessna Aircraft Co. v. Dalton, 126 F.3d 1442, 1447 (Fed. Cir. 1997).* The GAOA requires that a claim be determined first by a contracting officer and the GAOA is a contract dispute. Therefore, it is properly pursuant to the CDA.

Judicial economy – A GAOA contracting officer decision can be taken directly to the U.S. Court of Federal Claims (CFC) or, as here, to the GSBCA. However, if it is submitted to the GSBCA, the decision may not be reviewed by the CFC because the GSBCA has the same powers to adjudicate the claim. *See Moore's Federal Practice 3d § 208.25 Appeals from Final Decisions of Agency Boards of Contract Appeals, 208-46 & 208-47, Synernet Corp. v. U.S. 41 Fed.Cl. 375, 386 ((1998)(contractor makes binding election to court or board), and Five Flags v. Dept. of Transportation, 854 F.2d 1438 (COA, Dist. Of Columbia Circuit 1998)(if ambiguous look to what Congress intended, in light of its undoubted concerns both with fairness and with judicial economy).* If, as the CAFC claims, they have no jurisdiction under a GAOA claim submitted from the GSBCA, and there are legitimate concerns for fairness and judicial economy, then:

no GAOA claim should ever be submitted to the GSBCA.

In fairness and judicial economy, every GAOA claim should be submitted directly to the CFC so that:

- The claim would not be adjudicated twice – once by the GSBCA and once by the CFC; and
- There is a direct appeal to the CAFC from the CFC but not from the GSBCA (according to the CAFC).

True Nature. The court is suppose to look to the true nature of the action in determining the existence or not of jurisdiction. *See Katz v. Cisneros, 16 F.3d 1204, 1207 (Fed. Cir. 1994) and 4 C.J.S. Appeal & Error § 43 p. 116 (whether right of appeal exists or not, the courts will look to the substance of the action to ascertain its true nature).* Corrigan is a "contractor" as that term is defined in the CDA. Corrigan's claim is based on regulation (GAOA) as well as contract (*offer* to pay for government related travel – *acceptance* by traveling for government and seeking reimbursement). Also, there is no question that the government - through the GAOA - recognizes this contract.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Pro Se
31912 – 53rd Place South
Auburn, WA 98001-3877
253.735.5025

JULY 2004

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

03-1200

JOHN L. CORRIGAN,

Appellant,

v.

Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,

Appellee.

03-1511

JOHN L. CORRIGAN,

Appellant,

v.

Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,

Appellee.

04-1150

JOHN L. CORRIGAN,

Appellant,

v.

Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,

Appellee.

II

ON MOTION

Before LOURIE, LINN and PROST, Circuit Judges.

LINN, Circuit Judge.

ORDER

In 03-1200, National Credit Union Administration (NCUA) moves for leave to file "notice of intent to proceed" out of time, with notice attached. John L. Corrigan opposes. In 03-1511 Corrigan moves "to determine jurisdiction prior to filing brief." In 03-1200 and 03-1511, NCUA moves to dismiss Corrigan's appeal for lack of jurisdiction. Corrigan opposes. NCUA replies. The court considers sua sponte whether 04-1150 should be dismissed for lack of jurisdiction.

Corrigan, an NCUA examiner, appeals from several General Services Board of Contract Appeals decisions: In the Matter of John L. Corrigan, GSBCA No. 15707-TRAV (September 6, 2002), In the Matter of John L. Corrigan, GSBCA No. 16096-TRAV (May 22, 2003), In the Matter of John L. Corrigan, GSBCA No. 116170-TRAV (October 3, 2003). In all three decisions the Board denied Corrigan's various claims that NCUA had wrongfully refused reimbursement of certain travel expenses. The Board based its decisions exclusively upon case law and its review and interpretation of the Federal Travel Regulations (FTR), utilizing its authority under the General Accounting Office Act of 1996 (GAOA, 31 U.S.C. § 3702.(a)(3).

This court's jurisdiction over direct appeals from final decisions of the Board is limited to those decisions rendered "pursuant to section 8(b)(1) of the Contract Disputes Act of 1978 [CDA] (41 U.S.C. 607 (g)(1)." 28 U.S.C. § 1295(a)(10); see G.E. Boggs & Assocs., Inc. v. Toskens, 969 F.2d 1023, 1026 (Fed. Cir. 1992). Corrigan's relationship with his employer is not based in contract and employment manuals governing travel expenses do not constitute contracts within the meaning of the CDA. Cf. Hamlet v.

United States, 63 F.3d 1097, 1101-02 (Fed. Cir. 1995) (because civil service employees serve by appointment, agency employment manuals are not contracts.)

The Board's decisions in these matter were not rendered pursuant to the CDA, but under the GAOA, which authorizes resolution of civilian employee federal travel claims. 31 U.S.C. § 3702(a)(3). If, as here, the CDA does not apply, the court lacks jurisdiction to decide whether the Board erred in denying Corrigan's claims. G.E. Boggs, 969 F.2d at 1026.

Accordingly,

IT IS ORDERED THAT:

(1) NCUA's motion for leave to file a "notice of intent to proceed" out of time in 03-1200 is granted.

(2) Corrigan's motion to determine jurisdiction in 03-1511 is granted.

(3) NCUA's motions to dismiss 03-1200 and 03-1511 are granted.

(4) 04-1150 is dismissed.

(5) Each side shall bear it own costs.

FOR THE COURT

Feb – 2 2004
Date

/s/ Richard Linn
Richard Linn
Circuit Judge

cc: John L. Corrigan
Cristina C. Ashworth, Esq.

ISSUED AS A MANDATE 03-1200 and 03-1511:
Feb – 2 2004
03-1200

United States Court of Appeals for the Federal Circuit

03-1200
JOHN L. CORRIGAN,
Appellant,
V.
Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,
Appellee.

03-1511
JOHN L. CORRIGAN,
Appellant,
V.
Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,
Appellee.

04-1150
JOHN L. CORRIGAN,
Appellant,
V.
Dennis Dollar, Chairman,
NATIONAL CREDIT UNION ADMINISTRATION,
Appellee

V

ON MOTION

Before LOURIE, LINN and PROST, Circuit Judges.

LINN, Circuit Judge.

ORDER

John L. Corrigan moves for reconsideration of this court's order dismissing appeals for lack of jurisdiction. Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

APR 23 2004
Date

/s/ Richard Linn
Richard Linn
Circuit Judge

cc: John L. Corrigan
Cristina C. Ashworth, Esq.

ISSUED AS A MANDATE (as to 04-1150): APR 23 2004

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 6, 2002

GSBCA 15707-TRAV

In the Matter of JOHN L. CORRIGAN

John L. Corrigan, Auburn, WA, Claimant.

Jon J. Canerday, Office of General Counsel, National Credit Union Administration, Alexandria, VA, appearing for National Credit Union Administration.

HYATT, Board Judge.

Claimant, John L. Corrigan, is employed as an examiner by the National Credit Union Administration (NCUA), in a region that includes the states of California and Washington. In early 2001, Mr. Corrigan resided in Colton, California. In April 2001, he relocated his residence to Auburn, Washington, near Seattle. The relocation was to be at his own expense. Prior to relocating, Mr. Corrigan was detailed by NCUA to Seattle and Montana for the period from March 19 to March 30, 2001. In anticipation of the move, Mr. Corrigan drove his privately owned vehicle (POV) to Seattle rather than use commercial transportation to travel to his assignment. During his detail in Seattle, he stayed with relatives rather than in commercial lodgings. When claimant completed his temporary duty, he left his car in Seattle and proceeded to Montana, returning to California from Montana via

commercial transportation. He submitted a travel voucher for his actual expenses. The voucher was partially paid, but the amount that was disallowed is in dispute.

Mr. Corrigan's temporary duty assignment in Seattle was from March 19 through March 23. After completing his assignment there, he left his car in Seattle and flew to Montana for a second week of temporary duty, staying in Montana from March 26 to March 30, and returning to California via commercial transportation on March 30. The issue claimant raises concerns the proper level of reimbursement for the expenses of the first leg of his temporary duty assignment -- the cost of driving to and staying in Seattle. NCUA takes the position that the proper level of payment is determined by a comparison of the constructive cost of commercial transportation to Seattle versus the cost of driving the personal vehicle there. Mr. Corrigan maintains that under the analysis set forth in the Board's decision in Russell E. Yates, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,705 (1999), reconsideration denied, 00-1 BCA ¶ 30,785, the agency should have reimbursed him using a constructive cost comparison that included the cost of commercial lodging in Seattle, despite the fact that he stayed with relatives.

Discussion

The Federal Travel Regulation (FTR) contains several relevant provisions. Section 301-70.105 of the FTR provides that when an employee elects to use a POV to travel on official business the agency must:

> Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem

> and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation . . . .

41 CFR 301-70.105 (2000). Another pertinent provision states that when the traveling employee chooses to stay with friends or relatives the employee may be reimbursed:

> for additional costs [the host] incurs in accommodating [the employee] only if [the employee is] able to substantiate the costs and [the] agency determines them to be reasonable. [The employee] will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.

41 CFR 301-11.12(c); see Javier R. Hernandez, 15338-TRAV, 00-2 BCA ¶ 31,139; Donald Mixon, GSBCA 14957-TRAV, 99-1 BCA ¶ 30,606.

In Yates, the claimant traveled from Houston, Texas, to Tampa, Florida, on official business for the National Aeronautics and Space Administration (NASA). Although NASA determined that travel by air was in the Government's best interest, claimant elected to drive his motor home instead. He resided in the motor home in lieu of staying in a local hotel. Following submission of claimant's travel voucher for actual costs incurred of nearly $1300, NASA determined the constructive cost of Mr. Yates' travel by computing the cost that the Government would have incurred if he had used commercial air transportation to travel to Tampa, which

was considerably less than what it cost Mr. Yates to drive his motor home to Tampa. NASA then used the actual cost of lodging, which was the cost of parking the motor home in a campground, in calculating the constructive cost element of the comparison prescribed by regulation. Mr. Yates argued that NASA should have calculated his constructive lodging costs using the Government rate for commercial lodging in the locality of his temporary duty assignment. The Board explained that in applying the constructive cost methodology of the FTR, the following procedure should be followed by the agency:

> This regulation requires an agency, when an employee chooses to travel in his or her own vehicle rather than by the means of transportation most advantageous to the Government, to calculate the employee's travel costs in two separate ways. First the agency should determine, through the standard application of statute and regulation, the allowability of the various components of an employee's travel claim. For example, with regard to costs associated with the use of a privately owned vehicle, the agency should apply the mileage reimbursement and associated provisions contained in subpart D of part 301-10 of the FTR. With regard to per diem expenses, including lodging costs, the agency should apply the provisions of part 301-11 of the FTR. The agency should then total the allowable costs.

> Second, the agency should determine the total constructive cost of the employee's travel had he or she traveled by the method of transportation deemed to be in the Government's best interest. As we noted in our earlier decision in this case, constructive costs are by their very nature not costs which are actually incurred. Although these costs, too, should be determined through application of statute and regulation, the calculation necessarily will involve assumptions. As with the employee's travel costs determined in standard fashion to be allowable, the agency should likewise calculate a total constructive cost.
>
> After computing the two totals, the agency should compare them. If the total of costs determined in standard fashion to be allowable is greater than the total of the constructive costs, the agency should limit reimbursement to the latter figure. Under FTR 301-70.105, this overall total of constructive costs serves as a limitation on the amount of allowable travel costs an employee may recover when choosing to travel by POV rather than in the manner deemed to be in the Government's best interest.

Yates, 00-1 BCA at 152,027. In Yates, the Board went on to recognize that but for the fact of having driven his motor home to Tampa, the claimant would have stayed in commercial accommodations. Thus, the Board

considered it would be proper to add the cost of that lodging to the constructive cost calculation. The constructive cost so calculated would then constitute the upper limit on recovery of actual costs incurred by the claimant for traveling on official duty. Id.

Applying the Yates approach here, the agency would first calculate what it actually cost the employee to travel to the detail. In this case, in computing Mr. Corrigan's travel costs associated with the Seattle leg of his detail, the agency has determined the allowable mileage and the cost of staying with relatives, which Mr. Corrigan has stated is $0. This would then be compared to the total constructive cost of Mr. Corrigan's travel had he used the method of transportation deemed to be in the Government's best interest. This is where the issue presented for our resolution arises. Mr. Corrigan argues that Yates requires the agency to include the estimated cost of commercial lodging as a component of what it "would have cost" the agency had he traveled by the means considered to be in the Government's best interest. NCUA urges that it is not required to calculate constructive costs in this manner. Yates is distinguishable because the claimant in that case did not stay with relatives as an alternative to using commercial lodging. The agency maintains that applying the Yates approach in this case would run afoul of the FTR's express provision that an employee not be compensated for the cost of conventional lodging when staying with relatives.

Mr. Corrigan's reliance on Yates is understandable, but misplaced. As we noted in Yates, the computation of the constructive cost total to be compared to the actual cost total is based on reasonable assumptions about what

costs the employee would have incurred had he or she used the travel method deemed to be in the Government's best interest. This will depend on the facts applicable to the individual travel claim. In Yates, the claimant's POV was a motor home, which served as a substitute for lodging as well as the means of transport to the temporary duty location. In those circumstances, the Board reasoned that had the claimant not traveled by this specific type of POV to Tampa, he would presumably have stayed in commercial accommodations since the motor home would not have been available. Thus, it was appropriate to look at the cost of local commercial accommodations to evaluate what cost the Government would have incurred had the employee chosen to fly to Tampa.

Here, the claimant stayed with relatives. Presumably, he could have stayed with relatives regardless of whether he flew or drove to Seattle. There is no reason to assume that he would have stayed in commercial lodgings had he traveled by air to Seattle. The agency, therefore, was not obligated to calculate the constructive cost of travel by using the cost of hotel accommodations as an alternative to staying with relatives. As such, Mr. Corrigan's claim was properly disallowed by NCUA.

/s/ signed

CATHERINE B. HYATT
Board Judge.

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 16, 2002

John L. Corrigan
6103 South 295th Court
Auburn, W A 98001

Dear Mr. Corrigan:

On September 26, the Board received your request for reconsideration of its decision In the Matter of John L. Corrigan. GSBCA 15707- TRAV, which was issued on September 6, 2002.

The Board has reviewed this request. It denies reconsideration of the decision.

/s/ signed
BEATRICE JONES
Clerk of the Board

cc:
Jon J. Canerday
Office of General Counsel
National Credit Union Administration
1775 Duke Street, 6th Floor
Alexandria, VA 22314

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

May 22, 2003

GSBCA 16096-TRAV

In the Matter of JOHN L. CORRIGAN

John L. Corrigan, Auburn, WA, Claimant.

Kathy Sachen-Gute, Trial Attorney, Office of the General Counsel, National Credit Union Administration, Alexandria, VA, appearing for National Credit Union Administration.

DeGRAFF, Board Judge.

John L. Corrigan is an employee of the National Credit Union Administration (NCUA) and is permanently stationed in Seattle, Washington. In 2001, NCUA authorized Mr. Corrigan to perform temporary duty in Butte, Montana, from November 26 through 30; in Anaheim, California, from December 3 through 7; and in Salt Lake City, Utah, from December 10 through 14.

Rather than fly back to Seattle between the temporary duty assignments, Mr. Corrigan flew from

Butte, Montana, to southern California, spent the weekend there, performed his temporary duty assignment in Anaheim, California, spent a second weekend in southern California, and then flew to Salt Lake City, Utah. While in southern California, Mr. Corrigan stayed with his son. He rented a car each weekend he was there, at a cost of $129.77, and used the car for his personal convenience.

Mr. Corrigan asked to be reimbursed for the cost of the rental car. The agency denied his request, because it had not authorized the use of a rental car and because the rental car was not used to perform official agency business. Mr. Corrigan asks us to review the agency's decision. He believes he should be reimbursed for the cost of the rental car, because the costs he actually incurred when he performed his travel were less than the constructive costs he would have incurred had he performed his travel as authorized by NCUA. In his view, when an agency authorizes an employee to travel, the agency has offered to let the employee travel in accordance with the travel authorization or to travel not in accordance with the authorization. Mr. Corrigan says the employee "is free . . . to make his travel arrangements as he sees fit. If the traveler deviates [from what the agency authorized], . . . [a] contract is made" and the agency is obligated to reimburse the employee's actual costs, so long as they are less than the constructive costs the employee would have incurred if he had traveled as authorized. According to Mr. Corrigan, the agency has "no say" as to what an employee includes in his calculation of actual costs and must reimburse the employee for all such costs if they are less than the constructive costs of travel.

NCUA correctly decided not to reimburse Mr. Corrigan for the cost of his rental car. A travel authorization does not constitute an offer to the employee that results in a contractual relationship between the employee and the agency. Instead, a travel authorization is "[w]ritten permission to travel on official business." 41 CFR 300-3.1 (2001). If an employee, for personal convenience, deviates from what an agency authorizes and travels by an indirect route, the employee's reimbursement is limited to the cost of travel by a direct route (in other words, the constructive costs the employee would have incurred if he had traveled as authorized), and the employee is responsible for any additional costs he actually incurs. 41 CFR 301-10.8. An agency does not have to reimburse an employee for all of his actual costs, and most definitely has a "say" as to what an employee includes in the calculation of actual costs, because the only travel expenses an agency may pay are those "essential to the transaction of official business." 41 CFR 301-2.2, -2.4. Mr. Corrigan rented a car for his personal convenience. Because the expense he incurred was not essential to the transaction of official business, the agency cannot reimburse him for the cost of the rental car.

/s/ signed
MARTHA H. DeGRAFF
Board Judge

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 20, 2003

John L. Corrigan
6103 South 295th Court
Auburn, WA 98001

Dear Mr. Corrigan:

On June 11, 2003, the Board received your request for reconsideration of its decision In the Matter of John L. Corrigan. GSBCA 16096-TRAV, which was issued on May 22, 2003.

The Board has reviewed this request. It denies reconsideration of the decision.

/s/ signed
BEATRICE JONES
Clerk of the Board

cc:
Kathy Sachen-Gute, Esq.
Office of General Counsel
National Credit Union Administration
1775 Duke Street, 6th Floor
Alexandria, VA 22314-3428

XVIII

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

October 3, 2003

GSBCA 16170-TRAV

In the Matter of JOHN L. CORRIGAN

John L. Corrigan, Auburn, WA, Claimant.

Kathy Sachen-Gute, Office of General Counsel, National Credit Union Administration, Alexandria, VA, appearing for National Credit Union Administration.

BORWICK, Board Judge.

Claimant, an examiner with the National Credit Union Administration (NCUA or agency), has filed claims at this Board contesting the agency's denial of expenses allegedly incurred on two separate temporary duty (TDY) trips, one to Orlando, Florida, and another trip to Alexandria, Virginia. We deny both claims since the agency correctly applied the provisions of its governing travel manual and of the Federal Travel Regulation (FTR) incorporated therein.

Background

Florida Trip

From August 11 through August 16, 2002, claimant traveled on official business to Orlando, Florida, from his permanent duty station (PDS) in Seattle, Washington. The purpose of the trip was to attend a conference. The agency advised the employees traveling to the conference that they could use a discount airline ticket and stay an extra night at a hotel if the combined cost of the extra night at the hotel and the discount airline ticket would result in a savings to the Government.

Claimant, however, arranged his travel using an indirect route. Claimant booked a one-way trip from Seattle to Orlando. He booked his return trip from Fort Lauderdale, not Orlando, and for August 24, not for August 16 (when the conference ended).

Claimant stayed at the Wyndham Palace Hotel during the conference. At the end of the conference on August 16, claimant went to Fort Lauderdale instead of returning directly to his PDS in Seattle. Claimant states:

> For personal convenience I traveled to Orlando, FL on Saturday (rather than Sunday), took a taxi (rather than the $23 round-trip shuttle), and took alternative transportation when leaving [the] Wyndham Palace to Fort Lauderdale. I also stayed in a Holiday Inn Express on Friday, August 16, 2002, on my way to Fort Lauderdale.

Claimant submitted a voucher for the entire trip that the agency partially disallowed. The agency refused to reimburse claimant $261.30 worth of incurred expenses. Those expenses included, according to

claimant, $125 for lodging at the Wyndham Palace on Saturday, August 10. As to that expense, claimant states:

> The Saturday night [August 10] stay at the Wyndham Palace was paid by [the agency]. I do not have that cost. I estimated the cost of that night to be $125.

According to the electronic vouchers submitted to the Board by the agency, the hotel directly billed the lodging cost to the agency. In its submission to the Board, the agency confirms that it paid for that night's lodging cost, but that the cost it paid was $99, not $125. The agency, therefore, refused to reimburse claimant the $125 for the night at the Wyndham Palace because the agency had already paid for that night. It refused to reimburse claimant for the other claimed costs because claimant incurred those costs for his personal convenience--his trip to Fort Lauderdale--and not for Government business--the conference in Orlando. It did reimburse claimant $23 for the cost of the round-trip shuttle between the Orlando Airport and the Wyndham Palace.

Virginia Trip

On Sunday, September 29, 2002, claimant traveled on official business from his PDS to Alexandria, Virginia, to attend a training session that was to begin Monday. The agency scheduled the training session to end at noon on Friday, October 4.

On October 2, claimant and his supervisor conducted an e-mail message conversation about claimant's return to his PDS. Claimant told his supervisor that he had considered returning to Seattle on a nonstop

flight from Dulles International Airport on the afternoon of October 4. In his experience, however, Dulles was "not pleasant." Claimant said that he planned to return to Seattle Saturday morning from Reagan National Airport. In response, claimant's supervisor told claimant that the agency would not authorize claimant's reimbursement of lodging expenses for the night of October 4 because claimant had ample time to return to Seattle on the afternoon of October 4.

The training session ended as scheduled at noon on October 4. The agency reports, without contradiction from claimant, that claimant could have taken non-direct flights from Reagan National Airport at 2:00 p.m. or 3:00 p.m. Eastern Time, which would have arrived in Seattle at 6:21 or 7:21 Pacific Time, respectively. Additionally, the agency reports that there was at least one non-stop flight to Seattle from Dulles International Airport at 5:00 p.m. that would have arrived in Seattle at about 8:00 p.m.

Instead of taking those flights on October 4, claimant stayed a night in the Washington, D.C., area and incurred lodging expenses for that night. Claimant took annual leave for the rest of the work day on October 4, even though the agency had advised claimant that he would be paid "travel time" for the remainder of the work day if he returned to Seattle on Friday after the training session had ended. Claimant returned to Seattle from his trip on Saturday, October 5. Upon claimant's return, he submitted a voucher requesting reimbursement for lodging and per diem for the night of October 4 and meals and incidental expenses (M&IE) for October 5. The agency denied claimant reimbursement of lodging for October 4 and M&IE for October 5 because his late return

to his PDS was not authorized. The agency granted claimant partial M&IE for October 4.

Discussion

The National Credit Union Administration

The NCUA is an independent federal agency which regulates, supervises, and insures federal credit unions and federally insured state-chartered credit unions pursuant to the Federal Credit Union Act, 12 U.S.C. §§ 1751-1795k (2000). The NCUA is composed of a board located in Alexandria, Virginia; six regional offices; and other specified offices. 12 CFR 790.2(a) (2002). The NCUA is managed by its board, which consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. 12 U.S.C. § 1752a(b), (c); 12 CFR 7902(b)(1).

Statute provides the board with broad appointment and spending authorities:

> In addition to the authority conferred upon it by other sections of this chapter, the Board is authorized in carrying out its functions under this chapter--
>
> (1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;
>
> (2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments by advance or

> by way of reimbursement . . . without regard to the provisions of any other law applicable to executive or independent agencies of the United States.

12 U.S.C. § 1766(i)(1), (2).

Pursuant to its authority, the NCUA has promulgated the NCUA Travel Manual (manual). The manual incorporates the provisions of the FTR, but also provides that where there is an inconsistency between the FTR and the manual, the manual shall take precedence. Manual ¶ 1-2. In analyzing these claims, therefore, we shall rely on both the manual and any relevant provisions of the FTR that are not inconsistent with the manual.

Florida Trip

Claimant maintains he is entitled to reimbursement of the amount the agency disallowed on a constructive cost theory. Claimant says that reimbursement of all of his claimed expenses, including the $261.30 the agency had disallowed, would be less than the cost of the trip had claimant traveled as authorized by the agency.

Claimant is not entitled to reimbursement of $125 for the August 10 stay at the Wyndham Palace because the agency has already paid for that night. Under the manual, claimant is only entitled to the "actual cost of lodging incurred by the traveler, up to the maximum allowed." Manual ¶ 5-4A.4.b; cf. 41 CFR 301-11.100 (comparable FTR provision). Since lodging for the night of August 10 was billed directly to the Government, claimant did not incur the expense and is thus not entitled

to reimbursement for that night, regardless of any constructive cost theory claimant advances.

The remainder of the $261.30 the agency disallowed was for transportation and lodging expenses claimant incurred in connection with claimant's personal trip to Fort Lauderdale, not for the conduct of official business. We have explained, in a decision involving this claimant, that employees are to be reimbursed only for necessary and reasonable expenses essential to the transaction of government business. John L. Corrigan, GSBCA 16096-TRAV (May 22, 2003), appeal docketed, No. 03-1511 (Fed. Cir. July 23, 2003); see Manual ¶ 1-3; 41 CFR 301-2.2, -2.4; Phillip V. Otto, GSBCA 16192-TRAV (Aug. 18, 2003). Indeed, the FTR states explicitly that an agency will not pay for services "unnecessary or unjustified in the performance of official business." 41 CFR 301-2.4. Since claimant incurred the expenses in furtherance of his personal trip to Fort Lauderdale, those amounts may not be reimbursed.

Virginia Trip

Claimant's training session ended at noon on Friday, October 4. Claimant chose to spend an extra night in the Washington, D.C., area instead of flying to Seattle on Friday afternoon. Claimant explains that his traveling that night would have meant, in his mind, working a fifteen or sixteen hour day.

We have held that an employee who delays his travel several nights for personal convenience is not entitled to per diem for those nights since the employee's absence from his PDS on those nights was not in

furtherance of Government business. Leo Bosner, GSBCA 15855-TRAV, 03-1 BCA ¶ 32,234. The General Accounting Office, our predecessor in deciding claims filed under 31 U.S.C. § 3702, has held that an employee who delays travel from Friday to Monday in order to increase per diem will be limited to the amount otherwise payable if the return travel had been performed without interruption after completion of temporary duty on Friday. George K Derby, B-203,915 (June 8, 1982); 55 Comp. Gen. 590 (1975); Ernest W. Vogt, 46 Comp. Gen. 425 (1966). In this case there were ample and convenient mid-to late-afternoon flights available to claimant to return him to Seattle after the end of the training session. It would have been practical for claimant to take one of those flights. The fact that claimant did not desire to travel that day was a matter of his personal convenience and, moreover, violated his supervisor's warning that he would not be reimbursed for a delayed departure.

Decision

The Board denies the claims.

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

November 20, 2003

John L. Corrigan
6103 South 295th Court
Auburn, WA 98001

Dear Mr. Corrigan:

On November 3, 2003, the Board received your request for reconsideration of its decision In the Matter of John L. Corrigan, GSBCA 16170-TRAV, which was issued on October 3, 2003.

The Board has reviewed this request. It denies reconsideration of the decision.

/s/ signed
BEATRICE JONES
Clerk of the Board

cc:
Kathy Sachen-Gute, Esq.
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National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428